

DRAFT

The Honorable Cathy McMorris Rodgers
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman McMorris Rodgers:

Thank you for your letter dated June 5, 2018. I share your appreciation for the significant investments that the City of Spokane has made to prioritize the health of the Spokane River and identifying the challenges associated with meeting the 2016 federally promulgated PCB criterion of 7 parts per quadrillion for protection of human health in Washington. Your letter expresses interest in the City and the State working together to develop a water quality standard variance for PCBs in the Spokane River, and asks the EPA for an overview of the WQS variance requirements, process and expectations.

A WQS variance is a regulatory mechanism that allows progress toward attaining a designated use and criterion that is not currently attainable. As you noted in your letter, the EPA's regulation at 40 CFR part 131.14 establishes a regulatory framework for WQS variances that provides states and authorized tribes and dischargers the time and flexibility to make incremental water quality improvements reflecting the best that can be achieved in a given period, with accountability measures to assure the public that progress will occur. WQS variances must first be adopted as legally binding provisions by the state or authorized tribe and approved by the EPA before they can be the basis for deriving water quality based limits in a National Pollutant Discharge Elimination System permit. As you may be aware, at the same time the EPA promulgated the new PCB criterion for Washington in 2016, the EPA also approved several revisions to the State's general variance procedures at WAC 173-201A-420. The procedures are designed to assist in criteria implementation by providing accountability and increasing efficiency when granting additional time to meet applicable criteria requirements through a WQS variance.

The EPA has developed resources to assist states and authorized tribes in adopting WQS variances, including a 2017 *WQS Variance Building Tool*¹ to help determine whether a WQS variance is appropriate for a particular situation, and if so, navigate the 40 CFR 131.14 requirements² to develop an initial WQS variance and identify the necessary supporting documentation. In addition to providing ongoing support and clarity to states and authorized tribes, the EPA is actively engaging with and assisting the Department of Ecology with understanding the WQS variance requirements and addressing the remaining concerns and challenges.

¹ <https://www.epa.gov/wqs-tech/water-quality-standards-variance-building-tool>

² The EPA's regulation at 40 CFR 131.14 requires that WQS variances must: 1) be legally binding, 2) define the scope (discharger(s) and water(s)), 3) identify the pollutant(s), 4) specify the interim quantifiable expression that reflects the highest attainable condition during the term of the variance (this condition cannot be lower than currently attained water quality), 5) define the term as the length of time necessary to achieve the highest attainable condition (if this term is longer than 5 years, the variance must define re-evaluation periods to ensure regular review with public input), and 6) be adopted after a public hearing consistent with 40 CFR 131.20. States and authorized tribes must submit associated documentation to justify the need for the variance, the highest attainable condition, and the variance duration.

The EPA remains committed to providing support to the City and State on implementation of the human health criteria, including the criterion for PCBs. Although your letter specifically inquires about WQS variances, the EPA recognizes that other implementation pathways may be available to address the implementation challenges regarding PCBs. Therefore, the EPA has been supporting the Department of Ecology in evaluating a variety of implementation options, in addition to WQS variances, through participation on the Spokane River Regional Toxics Task Force and through ongoing dialogue with the City. In addition, the EPA staff in the regional and HQ offices have participated in stakeholder meetings hosted by Ecology, and have assisted Ecology in exploring various options that would be consistent with the 40 CFR 131.14 requirements.

The EPA's understanding is that Ecology is considering working with individual dischargers to the Spokane River to evaluate the appropriate implementation tools and whether WQS variances for PCBs might provide the needed time and flexibility to continue improving the health of the Spokane River. Additionally, Ecology is planning to host a workshop in late summer 2018 to engage with stakeholders on implementation, including how to develop and apply for a WQS variance, and is working with the EPA to develop a *Frequently Asked Questions* document on WQS variances to complement that outreach effort. The EPA strongly supports Ecology's efforts and remains available to assist.

Thank you again for inquiring about the requirements for a WQS variance for PCBs in the Spokane River. If you have any questions, please feel free to contact me or have your staff contact Dan Opalski, Director of the Office of Water & Watersheds. You can reach Dan at (206) 553-1855 or Opalski.Dan@epa.gov.

Sincerely,

Chris Hladick
Regional Administrator